

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

INTEGRA REALTY RESOURCES,
INC.,

Plaintiff,

V.

INTEGRA REALTY, LLC

Defendant.

Case No. _____

COMPLAINT

COMES NOW PLAINTIFF, Integra Realty Resources, Inc. (“Integra Realty”), and for its Complaint against Defendant, Integra Realty, LLC (“Defendant”), states and alleges as follows:

THE PARTIES

1. Plaintiff Integra Realty is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1133 Avenue of the Americas, 27th Floor, New York, New York 10036.

2. Upon information and belief, Defendant is a limited liability company existing under the laws of the State of Minnesota, with a principal place of business at 9179 Woodhill Drive, Savage, Minnesota, 55378.

VENUE AND JURISDICTION

3. This is a civil action for trademark infringement and unfair competition arising under federal law for false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); and for trademark infringement and unfair competition

under the common law of the State of Minnesota. The Court has subject matter jurisdiction of the federal unfair competition claim pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a). The Court has subject matter jurisdiction over the related common law claims pursuant to the Court's ancillary and supplemental jurisdiction under 28 U.S.C. § 1367(b).

4. Venue is proper under 28 U.S.C. § 1391.

BACKGROUND FACTS

Plaintiff Integra Realty Resources

5. Since at least as early as 1999, Integra Realty adopted and used the marks INTEGRA REALTY RESOURCES and INTEGRA ("the INTEGRA Trademarks") for real estate appraisal, consultation regarding real estate appraisal services, and franchising of real estate appraisal services. Integra Realty uses its marks on its own and through franchisees and licensees, whose use of the INTEGRA Trademarks inure to Integra Realty's benefit.

6. Integra Realty's franchisees, including Integra Realty Resources-Kansas/Missouri/Illinois, Inc., are granted a license to use the trademarks INTEGRA and INTEGRA REALTY RESOURCES in connection with its residential and commercial appraisal services. Integra Realty Resources-Kansas/Missouri/Illinois, Inc. operates its business out of its office at 1901 West 47th Place, Suite 300, Westwood, Kansas 66205, and began using the INTEGRA Trademarks in Kansas in 1999.

7. Additionally, Integra Realty also licenses its IRR trademark (which is an acronym for INTEGRA REALTY RESOURCES) in connection with residential franchise services to IRR-Residential, LLC.

8. Notably, IRR-Residential, LLC operates its national headquarters and business out of its office at 1901 West 47th Place, Suite 300, Westwood, Kansas 66205. Thus, it is located in the same office as Integra Realty Resources-Kansas/Missouri/Illinois, Inc.

9. IRR-Residential, LLC has franchisees in approximately 16 states, including Minnesota. In fact, many of those franchisees and Integra Realty franchisees share offices around the nation.

10. Integra Realty, by virtue of its licensing relationship with IRR Residential LLC, began using the IRR mark in Minnesota in 2000 in connection with commercial appraisal services and 2001 in connection with residential appraisal and advisory services.

11. Additionally, Integra Realty advertises its franchisees' and licensees' services on its website at www.irr.com.

12. Although Integra Realty Resources-Kansas/Missouri/Illinois, Inc. is authorized to provide residential appraisal services, it regularly cross-markets and refers residential appraisal work to IRR-Residential, LLC.

13. Integra Realty has expanded its use of the INTEGRA Trademarks around the United States. Integra Realty has offices and franchisees in approximately 34 states, including Minnesota. Attached as Exhibit A is a copy of Integra Realty's website

showing the location of its offices in the U.S. Furthermore, many of those offices regularly provide services in other states where its offices are not physically located.

14. In particular to this lawsuit, Integra Realty regularly offers its real estate appraisal services, via its franchisees and licensees, in connection with the INTEGRA Trademarks in the states of Minnesota, Wisconsin, Iowa, North Dakota, and South Dakota (which states will be referred to as “the Midwest States”), usually via its offices in Westwood, Kansas (which is a suburb of Kansas City, Kansas), St. Louis, Missouri, Minneapolis, Minnesota, Milwaukee, Wisconsin, and Chicago, Illinois. Notably, one of Integra Realty’s licensees operates an office in downtown Minneapolis, Minnesota.

15. Integra Realty’s use of the term “INTEGRA” is inherently distinctive and has no significance in the relevant trade or industry, any geographical significance, or as applied to the services, other than to function solely as a trademark and identify the source of the services.

16. By virtue of Integra Realty’s extensive use and sales under the INTEGRA Trademarks around the nation and, specifically, in Minnesota, the INTEGRA Trademarks have also become distinctive, and widely recognized by members of the public who, upon seeing the name, identify the marks with Integra Realty.

Defendant’s Conduct

17. Defendant offers residential real estate brokerage services in and around Savage, Minnesota, a suburb of Minneapolis, Minnesota.

18. Defendant provides services that are intimately related to the services provided by Integra Realty’s franchisees and licensees.

19. Upon information and belief, Defendant began using the INTEGRA REALTY mark in connection with real estate brokerage services 2004. A copy of Defendant's home page on its website is attached as Exhibit B. Therefore, Defendant began using the INTEGRA REALTY mark after Integra Realty had established common law trademark rights in the Midwest States.

20. Defendant also use the INTEGRA REALTY mark in a logo, as seen in Exhibit B, to wit:



Notably, the term “INTEGRA REALTY” is the most dominant portion of the mark, and is broken up into two words, by a graphic design, thus further emphasizing the “INTEGRA” portion of the mark.

21. Additionally, Defendant's home page and advertising incorporates the same overall look and feel of Integra Realty's website and advertising. Attached as Exhibit C is Integra Realty's home page, which is to be compared with Exhibit B, Defendant's home page. For instance, Defendant has used a blue that has a similar hue to that of Integra Realty's website and advertising, as well as the use of other earth tone colors.

22. Defendant's properties webpage, which is attached hereto as Exhibit D, also demonstrates the fact that Defendant offers and provides its services in Minneapolis, which overlaps with Integra Realty's services in the Midwest States.

23. On May 25, 2011, counsel for Integra Realty wrote to Defendant and requested that Defendant cease using the INTEGRA REALTY trademark. Attached as Exhibit E is a copy of that letter.

24. On June 10, 2011, Defendant sent a written response to Integra Realty's counsel, refusing to cease using the INTEGRA REALTY trademark. Attached as Exhibit F is a copy of that letter.

25. Notwithstanding Integra Realty's request for Defendant to cease using the INTEGRA REALTY trademark, Defendant continues to market itself using the INTEGRA REALTY trademark.

26. Defendant's use of INTEGRA REALTY is likely to confuse customers and potential customers into believing that the services offered by Defendant originate from, are authorized by or are somehow affiliated with Integra Realty.

27. Despite actual notice, Defendant continues to use the INTEGRA REALTY trademark with full knowledge and complete disregard for Integra Realty's trademark rights in the INTEGRA Trademarks.

28. Integra Realty did not license or otherwise authorize Defendant to use the INTEGRA REALTY trademark, any mark confusingly similar thereto, or any mark that in any way represents or implies that Defendant is in any way associated with Integra Realty.

COUNT I

Federal Unfair Competition and False Designation Under 15 U.S.C. § 1125(a)

29. Integra Realty repeats and realleges each of the above paragraphs as if fully set forth herein.

30. Defendant's use of INTEGRA REALTY constitutes use in commerce of a symbol or device or a false designation of origin, or a false or misleading description or representation with respect to Defendant's goods and services, which is likely to cause confusion, to cause mistake, or to deceive as to affiliation, connection, or association of Defendant and Integra Realty, or as to the origin, sponsorship, or approval of Defendant's services, and Integra Realty has been and is likely to be damaged by Defendant's use of such symbol, device, or false designation of origin, or false or misleading description or representation all in violation of 15 U.S.C. §1125(a).

31. Defendant intentionally and knowingly infringe Integra Realty's trademark rights.

32. Upon information and belief, Defendant's infringing activities have caused Integra Realty to lose control of its hard-earned reputation, have damaged Integra Realty's reputation and goodwill among consumers, and have diverted sales away from Integra Realty.

33. Defendant's conduct complained of herein has caused substantial and irreparable damage to Integra Realty and will continue to cause further irreparable damage to Integra Realty if Defendant is not permanently enjoined by this Court from

further violations of Integra Realty's rights and Integra Realty has no adequate remedy at law.

COUNT II
Common Law Trademark Infringement and Unfair Competition

34. Integra Realty repeats and realleges each of the above paragraphs as if fully set forth herein.

35. Integra Realty has priority of use in Minnesota of the INTEGRA Trademarks for real estate appraisal services, related consulting and franchising services, and services related thereto.

36. Defendant's use of INTEGRA REALTY constitutes use in commerce of a symbol or device or a false designation of origin, or a false or misleading description or representation with respect to Defendant's goods and services, which is likely to cause confusion, to cause mistake, or to deceive as to affiliation, connection, or association of Defendant and Integra Realty, or as to the origin, sponsorship, or approval of Defendant's services, and Integra Realty has been and is likely to be damaged by Defendant's use of such symbol, device, or false designation of origin, or false or misleading description or representation all in violation of the common law of the State of Minnesota.

37. Defendant's conduct complained of herein has caused substantial and irreparable damage to Integra Realty and will continue to cause further irreparable damage to Integra Realty if Defendant is not permanently enjoined by this Court from further violations of Integra Realty's rights and Integra Realty has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Integra Realty demands a judgment against Defendant and prays that this Court will:

1. Permanently enjoin Defendant, its agents, servants, employees and attorneys and all persons in active concert or participation with them or acting for, with, by, through, or under them, from infringing Integra Realty's INTEGRA Trademarks, either alone or in association with other terms; from unfair competition with Integra Realty; from falsely designating the origin of Defendant's goods and services; from cyberpiracy, and specifically from:

a. Using INTEGRA, INTEGRA REALTY, or any mark confusingly similar thereto, alone or in combination with any other letters, words or marks, as a trademark, service mark or trade or corporate name on or in connection with the advertising, offering for sale, or actual sale of services of Defendant;

b. The continuing use of INTEGRA, INTEGRA REALTY, or any other name or mark confusingly similar thereto, including any use of any confusingly similar mark in any trade name, domain name, advertising, promotional materials, course materials, online materials or in any metatags used on or in connection with any domain name of Defendant;

c. Passing off, inducing others or enabling others to sell or pass off any service of Defendant as that of Integra Realty;

d. Registering, maintaining and/or using the domain name www.integrarealty.com or any other domain name that includes the mark

INTEGRA, INTEGRA REALTY, or any colorable variation thereof, as a part of a domain name; and

e. Committing any other acts calculated to cause purchasers to believe that Defendant's services are services of Integra Realty or are in any manner sponsored, endorsed, licensed or approved by Integra Realty;

2. Require Defendant to immediately discontinue using any and all signs or insignia, stationery, advertising, and promotional materials bearing the mark INTEGRA, INTEGRA REALTY, or any name confusingly similar thereto, or any marks or designs owned by Integra Realty, or any variation thereof, or any name or design substantially similar thereto;

3. Require that, pursuant to 15 U. S.C. § 1118 Defendant deliver up for destruction any catalogs, circulars, signs, prints, books, instructional materials, advertising and packaging materials, labels, wrappers, stationery or any other materials in the possession of Defendant or under its control and bearing any mark in whole or in part containing the term INTEGRA, INTEGRA REALTY, or any derivation thereof, or any mark confusingly similar thereto.

4. Order that Defendant be directed to immediately transfer the domain name www.integrarealty.com to Integra Realty; and attorneys' fees, per 15 U. S.C. § 1117 and/or the laws of Minnesota.

5. Grant to Integra Realty an award and accounting of Defendant's profits, and any damages sustained by Integra Realty.

6. Award punitive damages for Defendant's acts of unfair competition.

7. Grant to Integra Realty such further relief as may be equitable and proper.

Respectfully submitted,

FAEGRE & BENSON LLP

s/Randall E. Kahnke

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